

# INFORMATION LETTER

Not for  
Publication

NATIONAL CANNERS ASSOCIATION

For Members  
Only

No. 1417

Washington, D. C.

December 13, 1952

## Can Use Quotas May Be Lifted From NPA Order M-25 in 1953

Restrictions on the quantity of cans that may be used to pack any product probably will be permitted to lapse about the first of the year, according to the National Production Authority.

NPA said this may be accomplished by not renewing provisions of the can order, M-25, which set forth the percentage restrictions on use of cans. No change in specification requirements is contemplated.

These subjects were discussed by NPA at a meeting with its Can Manufacturers Industry Advisory Committee on December 10.

NPA said that except for uncertainties in the Bolivian tin nationalization program and other possible hostile developments, prospects for adequate supplies of tin during 1953 are good. Receipts of tin during the third and fourth quarter of this year also are good.

Allocations of tin mill products for can manufacturers amounted to about 813,000 tons for the fourth quarter of 1952 and will amount to slightly more than 1,000,000 tons for the first quarter of 1953. NPA said the first quarter outlook is good. Because of a decline in exports, supplies of tin mill products may exceed demand during the second quarter.

The metal can conservation goals announced by the Defense Production Administration (see INFORMATION LETTER of November 8, page 297) were reviewed by NPA as follows:

**Metal Cans-Tin Conservation:** To meet the \$31,000,000 expansion goal set for additional facilities to manufacture metal cans using less tin, applications for rapid tax amortization amounting to \$5,000,000 have been received. Of the \$5,000,000 total, 80 percent of the applications have been certified and the remainder are in process.

**Metal Cans:** The 4,700,000-ton 1956 expansion goal to provide an additional 800,000 tons of can manufacturing facilities was based on a practical maximum 1950 capacity of 3,900,000 tons of tin mill products. Industry average production of tin mill products per operating line was estimated at 3,750 tons annually.

## Supreme Court Denies FDA Plant Inspection Right

The Supreme Court of the United States, in a decision rendered December 8, in effect denied that the Federal Food, Drug, and Cosmetic Act requires food processors to throw open their plants to inspection by the Food and Drug Administration.

The decision was rendered in the case of *United States v. Ira D. Cardiff* (see INFORMATION LETTER of March 8, 1952, page 121). By upholding the decision of the U. S. Circuit Court in San Francisco, which had found the factory inspection provisions of the Food, Drug, and Cosmetic Act too indefinite and ambiguous to support the criminal conviction of a food processor who had refused to permit

Food and Drug inspectors to enter his plant, the Supreme Court has deprived the Food and Drug Administration of legal authority to carry out one of its major enforcement activities.

## Sugar Consumption Quota Set by USDA at 7,800,000 Tons

A total of 7,800,000 tons of sugar has been determined to be needed to meet consumer requirements in the United States in 1953, it was announced December 5 by the U. S. Department of Agriculture.

This determination for 1953 compares with an initial determination of 7,700,000 tons, a final determination of 7,900,000 tons, and an estimated actual consumption of 8,100,000 tons in 1952.

In announcing the 1953 quotas, USDA said:

"Sugar prices were more stable this year than last, and average prices were a little higher than in 1951. However, sugar prices have remained below the levels indicated as desirable by the Sugar Act. Recently sugar prices have declined, and raw sugar for delivery in 1953 is being sold at discounts under current prices. The quotas have been set 400,000 tons below estimated consumption in 1953. As sugar prices during the course of the year achieve a fair relationship with prices of other commodities, sugar quotas can be increased."

The Sugar Act requires that total quotas be such that the resulting prices for sugar be fair to both the domestic sugar industry and consumers.

Immediately after the decision was handed down, Charles W. Crawford, Commissioner of Food and Drugs, issued a statement declaring that the agency would consider the decision as depriving them of all rights of plant inspection not voluntarily accorded by the food processor, whether permission to inspect had been previously granted or not.

Legislation amending the Food, Drug, and Cosmetic Act to restore the factory inspection right will be sought by the government immediately upon

(Please turn to page 320)

## GOR 2-Sales to Government

Amendment 4 to GOR 2 authorizes sellers to add to their ceiling price the costs of exportation incurred on sales of any commodity destined for exportation by the government. Costs of exportation are defined in the amendment as including "(a) export packaging and marking, (b) local drayage, including waiting time at the dock, loading and unloading, tollage, switching, dumping and trimming, lighterage and wharfage, (c) inland freight, (d) and other similar charges which you are required to pay by the government procurement agency."

## PERSONNEL

### Michigan Canners Association

The Michigan Canners Association reelected the following officers recently at the association's fall meeting:

President—A. Edward Brown, Michigan Fruit Canners, Inc., Benton Harbor; vice president—C. H. Carlson, Burnette Farms Packing Co., Hartford; secretary-treasurer—Reed M. Roberts, Grand Rapids.

### New York State Canners

The New York State Canners and Freezers Association, Inc., elected the following officers recently at the association's annual convention:

President—Walter W. Wilson, Silver Creek Preserving Co., Silver Creek; vice president—Francis J. Miller, Curtice Brothers Co., Rochester; treasurer—Don B. Ingersoll, Halstead Canning Co., Inc., Cortland; secretary—William H. Sherman, Rochester (reelected).

### Ohio Canners Association

The Ohio Canners Association elected the following officers recently at the association's annual convention:

President—Thomas Timmer, Tip Top Canning Co., Tipp City; first vice president—Russell B. Kline, Stokely-Van Camp, Inc., Celina; second vice president—E. E. Richard, H. J. Heinz Co., Bowling Green; secretary-treasurer—Paul Hinkle, Celina (reelected).

### Tri-State Packers Association

The Tri-State Packers Association, Inc., elected the following officers recently at the association's annual convention:

President—Glenn E. Knaub, P. J. Ritter Co., Bridgeton, N. J.; first vice president—William E. Lamble, Jr., Southern Packing Co., Inc., Baltimore; second vice president—Harvey J. Jarboe, Harrison & Jarboe, Sherwood, Md.; secretary-treasurer—Calvin L. Skinner, Easton, Md. (reelected); assistant secretary—John W. Rue, Easton, Md. (reelected); assistant treasurer—Edith Lee Porter, Easton, Md. (reelected).

### FDA Factory Inspection

(Concluded from page 319)

the opening of the new session of Congress, Mr. Crawford indicated.

The impact of the court ruling and its implications in respect to forthcoming legislative proposals will be thoroughly discussed at the annual Convention of the National Canners Association in February.

The text of the opinion is reproduced below. Justice William O. Douglas wrote the majority opinion. Justice Robert H. Jackson concurred and Justice Harold H. Burton dissented, each without a written opinion.

#### Supreme Court of the United States

The United States of America, Petitioner,

Ira D. Cardiff,

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[December 8, 1952.]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

Respondent was convicted of violating § 301 (f) of the Food, Drug, and Cosmetic Act, 52 Stat. 1040, 21 U. S. C. § 331 (f). That section prohibits "The refusal to permit entry or inspection as authorized by section 704."<sup>1</sup> Section 704 authorizes the federal officers or employees "after first making request and obtaining permission of the owner, operator, or custodian" of the plant or factory "to enter" and "to inspect" the establishment, equipment, materials and the like "at reasonable times."<sup>2</sup>

Respondent is president of a corporation which processes apples at Yakima, Washington, for shipment in interstate commerce. Authorized agents applied to respondent for permission to enter and inspect his factory at reasonable hours. He refused permission, and it was that refusal which was the basis of the information filed against him and under which he was convicted and fined. 95 F. Supp. 206. The Court of Appeals reversed, holding that § 301 (f), when read with § 704, prohibits a refusal to permit entry and

<sup>1</sup> The violation is made a misdemeanor by 21 U. S. C. § 333.

<sup>2</sup> Section 704 reads as follows: "For purposes of enforcement of this Act, officers or employees duly designated by the Administrator, after first making request and obtaining permission of the owner, operator, or custodian thereof, are authorized (1) to enter, at reasonable times, any factory, warehouse, or establishment in which food, drugs, devices, or cosmetics are manufactured, processed, packed, or held, for introduction into interstate commerce or are held after such introduction, or to enter any vehicle being used to transport or hold such food, drugs, devices, or cosmetics in interstate commerce; and (2) to inspect, at reasonable times, such factory, warehouse, establishment, or vehicle and all pertinent equipment, finished and unfinished materials, containers, and labeling therein."

inspection only if such permission has previously been granted. 194 F. 2d 686. The case is here on certiorari.

The Department of Justice urges us to read § 301 (f) as prohibiting a refusal to permit entry or inspection at any reasonable time. It argues that that construction is needed if the Act is to have real sanctions and if the benign purposes of the Act are to be realized. It points out that factory inspection has become the primary investigative device for enforcement of this law, that it is from factory inspections that about 80 percent of the violations are discovered, that the small force of inspectors makes factory inspection, rather than random sampling of finished goods, the only effective method of enforcing the Act.

All that the Department says may be true. But it does not enable us to make sense out of the statute. Nowhere does the Act say that a factory manager must allow entry and inspection at a reasonable hour. Section 704 makes entry and inspection conditioned on "making request and obtaining permission." It is that entry and inspection which § 301 (f) backs with a sanction. It would seem therefore on the face of the statute that the Act prohibits the refusal to permit inspection only if permission has been previously granted. Under that view the Act makes illegal the revocation of permission once given, not the failure to give permission. But that view would breed a host of problems. Would revocation of permission once given carry the criminal penalty no matter how long ago it was granted and no matter if it had no relation to the inspection demanded? Or must the permission granted and revoked relate to the demand for inspection on which the prosecution is based? Those uncertainties make that construction pregnant with danger for the regulated business. The alternative construction pressed on us is equally treacherous because it gives conflicting commands. It makes inspection dependent on consent and makes refusal to allow inspection a crime. However we read § 301 (f) we think it is not fair warning (cf. *United States v. Weitzel*, 246 U. S. 533; *McBoyle v. United States*, 283 U. S. 25) to the factory manager that if he fails to give consent, he is a criminal. The vice of vagueness in criminal statutes is the treachery they conceal either in determining what persons are included or what acts are prohibited. Words which are vague and fluid (cf. *United States v. Cohen Grocery Co.*, 255 U. S. 81) may be as much of a trap for the innocent as the ancient laws of Caligula. We cannot sanction taking a man by the heels for refusing to grant the permission which this Act on its face apparently gave him the right to withhold. That would be making an act criminal without fair and effective notice. Cf. *Herndon v. Lowry*, 301 U. S. 242. *Affirmed.*

MR. JUSTICE JACKSON concurs in the result.

MR. JUSTICE BURTON dissents.

In telephoning the  
National Canners Association's  
headquarters in Washington, D.C.,

call

Executive 3-7030

—the new telephone number for  
N.C.A. in Washington

## STANDARDS

### Grades for Canned Snap Beans

Notice is given in the *Federal Register* of December 6 that the Production and Marketing Administration, USDA, proposes to revise U. S. standards for grades of canned green beans and canned wax beans. The proposal provides drained weight recommendations for additional sizes of containers and makes changes in drained weight recommendations for can sizes listed in the current standards.

### Grades for Pineapple

Notice is given in the *Federal Register* of December 6 that the Production and Marketing Administration, USDA, proposes to revise U. S. standards for pineapples so as to require that pineapples in each grade be of similar varietal characteristics and that pineapple tops in each grade be of characteristic color.

## PROCUREMENT

### Grapefruit Sections for USDA

The U. S. Department of Agriculture on December 8 announced its intention to purchase canned grapefruit sections of the 1952-53 pack for distribution in the National School Lunch Program.

Offers may be submitted for No. 2 cans, Grade A (Fancy), for delivery during the period January 5 through February 14. Offers may be submitted to USDA not later than 9 a.m. EST December 16.

Details and specifications have been mailed under Announcement FV-198 to grapefruit canners. Further information regarding the purchase may be obtained from M. F. Miller, Fruit and Vegetable Branch, PMA, USDA, Lakeland, Fla., or M. T. Coogan, F & V Branch, PMA, USDA, Los Angeles, Calif.

## STATISTICS

### 1952 Pack of Lima Beans

The 1952 pack of canned fresh lima beans amounted to 2,568,692 actual cases as compared with last year's pack of 3,278,361 cases, according to a report by the N.C.A. Division of Statistics.

On the basis of 24/2's, the 1952 pack amounted to 2,316,000 cases as compared with 2,950,000 cases in 1951.

Following is a summary of the 1951 and 1952 packs in actual cases by areas and varieties:

	1951 (actual cases)	1952 (actual cases)
Maryland and Delaware		
Green limas:		
Midget and tiny.....	230,451	181,887
Small .....	419,731	249,824
Medium .....	92,769	96,431
Large .....		
Mixed .....	112,810	59,465
Green and white.....	409,922	236,655
White .....	6,391	12,502
Fordhooks .....	9,701	1,294
Total .....	1,331,775	828,746

	1951 (actual cases)	1952 (actual cases)
Eastern states:		
Green limas:		
Midget and tiny.....	45,632	36,092
Small .....	146,254	86,061
Medium .....	33,874	73,406
Large .....	23,374	9,344
Mixed .....	93,025	54,200
Green and white.....	190,136	91,796
White .....	88	2,851
Fordhooks .....	6,325	16,818
Total .....	568,628	344,874

	1951 (actual cases)	1952 (actual cases)
Western states:		
Green limas:		
Midget and tiny.....	70,817	164,192
Small .....	152,004	135,796
Medium .....	105,881	101,513
Large .....	2,794	
Mixed .....	496,001	604,101
Green and white.....	349,986	171,423
White .....	3,577	15,431
Fordhooks .....	176,802	112,926
Total .....	1,357,958	1,295,272
U. S. Total .....	3,278,361	2,568,692

### Citrus Fruit Production

Prospective production of 1952-53 citrus crops is forecast by the Bureau of Agricultural Economics at above average and above last season for all crops except grapefruit.

Grapefruit production is forecast at 38.4 million boxes, 5 percent below last season and 25 percent below average.

The orange crop is forecast at a record of 58.8 million boxes of early and midseason oranges and 62.8 million boxes of Valencia oranges, 3 percent above last season and 19 percent above average.

Lemons are forecast at 13.1 million boxes, up 2 percent from last season and 4 percent above the 1941-50 average.

Following is a summary of production prospects for the coming season, with comparisons:

	1941-50 average	1951 Indicated	1952 Indicated
(thousands of boxes)			
Oranges .....	102,307	118,090	121,650
Tangerines .....	4,100	4,500	4,700
Grapefruit .....	51,222	40,500	38,440
Lemons .....	12,614	12,800	13,100

Season begins with the bloom of the year shown and ends with the completion of harvest the following year.

In Florida, trees and fruit are in good condition but sizing of fruits has not been sufficient to make up for the lighter set this season. Prospects for early and midseason oranges declined during November and the crop is now forecast by BAE at 43 million boxes, 800,000 less than last season. Florida Valencias are forecast at 34 million boxes, one million less than a month earlier and 800,000 boxes less than last season.

California's Valencia oranges are forecast at 28 million boxes, 8 percent above last season but 6 percent below average. Navel and miscellaneous oranges are placed at 14.6 million boxes, also above last season and below average.

Prospects for grapefruit in Florida remained at 33 million boxes, but 3 million boxes less than total production last season. In 1951-52, 3 million boxes were left unharvested.

Utilization of both oranges and grapefruit in Florida to December 1 was about the same as to the same date last year, BAE said. In both seasons about 7 million boxes of oranges were used before December 1, 4 million sold fresh, and 3 million processed. Grapefruit utilization totaled about 5 million boxes, of which 3.7 million boxes were sold fresh and the balance processed.

### Consumer Purchases of Juices

Total purchases of all canned single-strength juices by householders during July-September were somewhat below those of the preceding quarter but were about the same as a year earlier, according to a report by the Bureau of Agricultural Economics and the Fruit and Vegetable Branch of PMA.

For the year ending September 30, householders bought about 15 percent more canned single-strength juices than in the previous year and about



17 percent more than in the 1949-50 season.

Consumers bought a total of 101,000,000 cases (equivalent 24 No. 2 cans) of all canned single-strength juices during the year ended September 30, compared with 88,000,000 cases in the previous 12-month period. The largest of this gain was accounted for by larger purchases of pineapple, tomato, and orange juices. Other major juices except grapefruit juice showed only moderate gains.

Householders in all major regions bought more canned juices; however, the increase in purchases in the Northeast and North Central regions did not keep pace with increases in other regions. There was no appreciable change in the relative importance of independent and chain stores as retail outlets for canned single-strength juices during this 12-month period compared with the previous year. During July-September, 1952, total purchases of single-strength juices by households were slightly more than in these months a year earlier.

Consumer purchases of canned single-strength orange juice during July-September, 1952, were considerably less than in this period a year ago. However, purchases of frozen concentrated orange juice almost doubled. According to the report, changes in prices consumers paid for these products were an important factor in the volume purchased.

For the first time in this series of quarterly reports, data are available concerning household purchases of canned single-strength orangeade. Purchases of single-strength orangeade were high in the North Central region, but the per capita rate was slightly smaller than that reported in the Mountain-Southwest and the South. The nation's households bought a total of 1,138,000 cases (equivalent 24 No. 2 cans) of canned orangeade during July-September at an average price of 26.4 cents per 46-ounce can.

Household purchases of canned grapefruit juice were slightly less during 1951-52 than in the 1950-51 season, but purchases of orange and grapefruit juice blended during 1951-52 were about the same as the previous year.

Consumer purchases of canned pineapple juice during the year ended September, 1952, were 50 percent above purchases during the preceding 12-month period—the largest increase shown for any canned single-strength juice. Purchases increased most in the Northeast, but the largest relative increase took place in the South.

Purchases by householders during July-September, 1952, exceeded those of a year earlier by almost one-third.

Purchases of canned tomato juice during the year ended September, 1952, were about 17 percent more than

in the preceding year. Householders in each region bought more. During July-September, household purchases were almost 30 percent larger than in the corresponding quarter of 1951.

**Canned Single-Strength Juices: U. S. Consumer Purchases, by Regions, July-September, 1951 and 1952**

Item	United States	Northeast	North Central	South	Mountain-Southwest	Pacific
(thousands of standard cases of 24 No. 2 cans)						
Orange:						
July-Sept. 1952.....	4,845	1,238	1,440	1,190	605	372
July-Sept. 1951.....	6,289	1,775	2,312	1,161	600	381
Grapefruit:						
July-Sept. 1952.....	3,355	635	823	712	383	502
July-Sept. 1951.....	3,854	1,138	1,090	707	476	503
O-G Blend:						
July-Sept. 1952.....	1,446	513	531	185	(a)	142
July-Sept. 1951.....	1,710	613	638	187	112	160
Tangerine:						
July-Sept. 1952.....	223	78	83	(a)	(a)	(a)
July-Sept. 1951.....	406	182	129	(a)	(a)	(a)
Lemon:						
July-Sept. 1952.....	444	139	178	46	42	39
July-Sept. 1951.....	253	85	111	24	(a)	23
Apple:						
July-Sept. 1952.....	945	500	143	60	91	151
July-Sept. 1951.....	874	317	231	86	63	177
Grape:						
July-Sept. 1952.....	771	245	162	107	118	139
July-Sept. 1951.....	607	233	92	82	88	112
Pineapple:						
July-Sept. 1952.....	3,855	1,730	775	474	427	459
July-Sept. 1951.....	2,925	1,328	547	320	246	484
Prune:						
July-Sept. 1952.....	1,174	612	239	91	130	102
July-Sept. 1951.....	1,074	542	179	85	166	102
Tomato:						
July-Sept. 1952.....	5,077	1,832	1,226	615	602	602
July-Sept. 1951.....	3,943	1,489	946	511	433	564
Veg. combination:						
July-Sept. 1952.....	495	162	121	59	68	90
July-Sept. 1951.....	385	126	124	(a)	(a)	77
Total (b):						
July-Sept. 1952.....	23,730	8,552	5,972	3,614	2,665	2,917
July-Sept. 1951.....	23,233	8,305	6,530	3,281	2,420	2,688

(a) Too few purchases reported for analysis. (b) Includes purchases of other miscellaneous juices.

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